2009 DRAFTING REQUEST

Senate Amendment (SA-SB129)

Received: **04/09/2009**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Michael Ellis (608) 266-0718**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - guns and weapons**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Ellis@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Self defense

Instructions:

See attached; also draft to assembly bill ab 193

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?							
/P1	phurley 04/20/2009 phurley 05/04/2009	jdyer 04/21/2009 jdyer 05/04/2009	rschluet 04/21/2009	_____ _____ _____ _____	sbasford 04/21/2009		
/P2			jfrantze 05/04/2009	_____ _____	mbarman 05/04/2009		
/1	phurley	jdyer	phenry	_____	sbasford	sbasford	

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	05/05/2009	05/06/2009	05/06/2009	_____	05/06/2009	05/06/2009	

FE Sent For:

<END>

2009 DRAFTING REQUEST

Senate Amendment (SA-SB129)

Received: **04/09/2009**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Michael Ellis (608) 266-0718**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - guns and weapons**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Ellis@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Self defense

Instructions:

See attached; also draft to assembly bill ab 193

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?		1 5/6 jld					
/P1	phurley 04/20/2009 phurley 05/04/2009	jdyer 04/21/2009 jdyer 05/04/2009	rschluet 04/21/2009	_____ _____ _____ _____	sbasford 04/21/2009	please jacket 11	
/P2			jfrantze 05/04/2009	_____ _____	mbarman 05/04/2009		

5/6 ph 5/6 ph

FE Sent For:

<END>

2009 DRAFTING REQUEST

Senate Amendment (SA-SB129)

Received: **04/09/2009**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Michael Ellis (608) 266-0718**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - guns and weapons**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Ellis@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Self defense

Instructions:

See attached; also draft to assembly bill ab 193

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?		/P2 5/4 jld					
/P1	phurley 04/20/2009	jdyer 04/21/2009	rschluet 04/21/2009	_____ _____	sbasford 04/21/2009		

FE Sent For: 5/4 5/4

<END>

2009 DRAFTING REQUEST

Senate Amendment (SA-SB129)

Received: **04/09/2009**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Michael Ellis (608) 266-0718**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - guns and weapons**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Ellis@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Self defense

Instructions:

See attached; also draft to assembly bill ab 193

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	phurley						

FE Sent For:

<END>

MICHAEL G. ELLIS
STATE SENATOR

Wisconsin State Senate

19TH SENATE DISTRICT

TO: Peggy Hurley, LRB
FROM: Mike Boerger for Sen. Ellis

Peggy,

Per our conversations, please draft an amendment to SB 129 and AB 193 to include the situations of car-jacking and the civil-suit provisions included here.

Thank You,

Mike

District Office: 429 South Commercial Street, Neenah, WI 54956 • 920-751-4801
Capitol Office: P.O. Box 7882, Madison, WI 53707-7882 • 608-266-0718

have been known to be a peace officer) and was entering the residence in the performance of his or her official duties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 939.48 (1m) of the statutes is created to read:

939.48 **(1m)** (a) If an actor intentionally used force that was intended or likely to cause death or great bodily harm, the court shall presume that the actor reasonably believed that the force was necessary to prevent ~~imminent~~ death or great bodily harm ~~to~~ himself or herself if the actor makes such a claim under sub. (1) and any of the following applies:

1. The person against whom the force was used was in the process of unlawfully and forcibly entering the actor's residence, the actor was present in the residence and the actor knew or had reason to believe that an unlawful and forcible entry was occurring.

2. The person against whom the force was used was in the actor's residence after unlawfully and forcibly entering it, the actor was present in the residence, and the actor knew or had reason to believe that the person had unlawfully and forcibly entered the residence.

(b) The presumption described in par. (a) does not apply if any of the following applies:

1. The actor was engaged in an unlawful activity or was using his or her residence to further an unlawful activity at the time.

2. The person against whom the force was used was a peace officer who entered or attempted to enter the actor's residence in the performance of his or her official duties. This subdivision applies only if at least one of the following applies:

a. The officer identified himself or herself to the actor before the force described in par. (a) was used by the actor.

b. The actor knew or reasonably should have known that the person entering or attempting to enter his or her residence or vehicle was a peace officer.

~~5~~

3. The actor ~~a person~~ who is not the initial aggressor and is not engaged in unlawful activity shall have no duty to retreat before using deadly force under subsections 1m(a) 1 or 2 of this section if the person is in a place (his/her home or vehicle) where the person has a right to be, and no finder of fact shall be permitted to consider the ~~person's~~ actor's failure to retreat as evidence that the ~~person's~~ actor's use of force was unnecessary, excessive or unreasonable.

4(a) The presumptions contained in subsection (1m)(a) of this section shall apply in civil cases in which the self defense or defense of another is claimed as a defense.

cont'd

4(b) The court shall award reasonable attorney's fees court costs, compensation for lost income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant acted in accordance with subsection (1m)(a) 1 or 2 of this section. A defendant who has been previously adjudicated "not guilty" of any crime by reason of subsection (1m) a 1 or 2 of this Section shall be immune from any civil action for damages arising from the same conduct.

Wisconsin Court of Appeals

PUBLISHED OPINION

COURT OF APPEALS

DECISION

DATED AND FILED
NOTICE
January 12, 1999

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and Rule 809.62, Stats.

Marilyn L. Graves

Clerk, Court of Appeals

of Wisconsin

No. 98-1739-CR
STATE OF WISCONSIN **IN COURT OF APPEALS**

DISTRICT III

State of Wisconsin,

Plaintiff-Respondent,

v.

LaVere D. Wenger,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Buffalo County: ROBERT W. WING, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

CANE, C.J. Following a jury trial, LaVere Wenger appeals a judgment of conviction for second-degree reckless injury with a dangerous weapon contrary to §§ 940.23(2) and 939.63(2), Stats.[1] On appeal, Wenger contends that the trial court erred by: (1) giving a jury instruction on his obligation to retreat regarding self-defense because he had no such obligation; and (2) excluding evidence about the victim's specific prior violent acts. Additionally, Wenger urges us to grant a discretionary reversal under § 752.35, Stats., because the jury instruction and "introduction of *McMorris* evidence"[2] prevented the real controversy, his claim of self-defense, from being fully tried.

First, we conclude that the trial court properly instructed the jury on retreat because retreat goes to the reasonableness of Wenger's conduct. Second, we hold that any error claimed in excluding evidence of the prior violent acts was

harmless. Finally, we decline his request for a discretionary reversal pursuant to §752.35, Stats., because the real controversy was fully tried. Accordingly, we affirm the judgment.

I. Facts

The victim, Randy Mueller, was married to Jackie Wenger for approximately two years. After Mueller and Jackie divorced, she married LaVere Wenger. Jackie then divorced Wenger and began dating Mueller. Jackie and Mueller lived together and were still living with each other in January 1997 when Wenger shot Mueller.

On January 4, 1997, Jackie went to Carol and Butch's Bar in Alma to watch a football game. Mueller, a dairy farmer, had asked Jackie to pick up some farming supplies so that he could complete his evening chores. After she watched the game, Jackie was supposed to bring the supplies home. Jackie saw Wenger at the bar, and the two watched football and drank beer. When Mueller called Jackie at the bar between 5 and 5:30 p.m., she indicated that she would be home soon.

Wenger and Jackie left the bar and went to another bar, the Dam View, where they stayed for one-half hour to an hour before going to Wenger's home. Mueller learned that Jackie had gone home with Wenger. While the parties agree that Mueller then drove to Wenger's residence, they disagree about why; Mueller testified that he wanted to talk to Jackie and take her home, but Wenger asserts that Mueller wanted to harm him.

Mueller knocked loudly on the door and Wenger answered. The parties disagree as to what happened next. According to Mueller, Wenger opened the door, the two talked, and Wenger invited him in. Mueller then told Wenger that he wanted to talk to Jackie, but Wenger, who was either "half sleeping" or "drunk," did not seem to understand Mueller. Wenger said that Jackie did not want to be bothered, and he refused to let Mueller talk to her. Then Wenger "lunged forward," and Mueller "chucked him on the side of the chin." Mueller noticed Jackie's coat and boots near the doorway and bent down to pick them up as proof that Jackie had been there.

When Mueller stood up, Wenger was standing in front of him with a gun pointed at his chest; Wenger flicked off the safety and told Mueller to "get out." Mueller complied, slamming the porch door en route to his truck. Mueller planned to go home. As he was walking back to his car, he felt himself "spiraling," lost consciousness, and fell. Wenger had shot Mueller in the legs.

Wenger had a different account of the shooting. He testified that when he responded to Mueller's banging on the door, Mueller was upset, red in the face, and angry. Mueller demanded to talk to Jackie, and when Wenger refused his request, Mueller tried to choke Wenger. Then Wenger "flew through the air," hit the wall and refrigerator, and lost consciousness. When he regained consciousness, he was in his living room and saw Mueller, who was inside, looking at him with a "very strange look, very angry look" on his face.

At that point, Wenger remembered that he had a loaded shotgun in his bedroom that he kept to protect himself from Mueller. Wenger retrieved the gun, pointed it at Mueller, and "ordered" him to leave. In response, Mueller said nothing and looked "straight ahead like he didn't see me." Wenger repeatedly told him to leave, but when Mueller refused, Wenger clicked off the safety, and Mueller left. Then Wenger heard glass breaking, but stayed in the house for a second or two before he went outside to check if Mueller was gone. Wenger found Mueller approximately ten to twelve feet away from him on the stoop's bottom step and told Mueller to "get going and keep going." Mueller replied, "I am, but I am coming right back in," and then Mueller turned ninety degrees.

Wenger then became concerned that Mueller would grab the gun. Because Wenger thought Mueller was coming back in the house, he intentionally shot him, aiming "low so it would hit him in the foot or whatever just to stop him." Immediately, Wenger called the police and told them he had shot Mueller and that Mueller needed help. Although Wenger acknowledged that he had consumed a "fair amount of beer" that day, he did not believe it affected his recollection of the events.[3] Further, he testified that he shot Mueller because he was "afraid he was going to come back and attempt my life again."

The shot severely injured Mueller's right and left legs, and as a result, he later had his left foot amputated. The

primary issue at trial was whether Wenger shot Mueller in self-defense. The jury concluded that Wenger had not acted in self-defense and convicted him of second-degree reckless injury by use of a dangerous weapon. This appeal followed.

II. Analysis

The privilege of self-defense is statutory. Because this is a self-defense claim, we set forth the self-defense statute, § 939.48(1), Stats., before addressing Wenger's claims of error:

> A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person. *The actor may intentionally use only such force or threat thereof as the actor reasonably believes is necessary to prevent or terminate the interference.* The actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.

Wis J I--Criminal 810 (emphasis added). With this statute in mind, we turn to Wenger's three arguments.

1. Jury Instructions

Wenger first argues that the trial court erred by giving the pattern jury instruction on self-defense and retreat, Wis J I--Criminal 810, because under *Miller v. State*, 139 Wis. 57, 119 N.W. 850 (1909), there is no duty to retreat, particularly in one's own home. *See State v. Kelley*, 107 Wis.2d 540, 319 N.W.2d 869 (1982); *State v. Herriges*, 155 Wis.2d 297, 455 N.W.2d 635 (Ct. App. 1990). The jury instruction provides:

> There is no duty to retreat. However, in determining whether the defendant reasonably believed the amount of force used was necessary to prevent or terminate the interference, you may consider whether the defendant had the opportunity to retreat with safety, whether such retreat was feasible, and whether the defendant knew of the opportunity to retreat.

It is well established that a trial court has wide discretion in instructing the jury based on the facts and circumstances of each case. *See State v. Vick*, 104 Wis.2d 678, 690, 312 N.W.2d 489, 495 (1981). "This discretion extends to both choice of language and emphasis. A trial judge should exercise discretion ... 'to fully and fairly inform the jury of the rules of law applicable to the case and to assist the jury in making a reasonable analysis of the evidence.'" *Id.* The burden is on the party challenging the jury instructions to specifically identify the error. *Howard v. State Farm Mut. Auto. Liab. Ins. Co.*, 70 Wis.2d 985, 996, 236 N.W.2d 643, 648 (1975). When we review a discretionary decision, we test whether the trial court rationally applied the appropriate legal standard to the relevant facts before it. *See Hedtcke v. Sentry Ins. Co.*, 109 Wis.2d 461, 471, 326 N.W.2d 727, 732 (1982). Accordingly, we must focus on the trial court's reasoning, which is as follows:

> The point I think is Wisconsin does have an objective portion to their self-defense law, so it is not a matter of what Mr. Wenger thought was reasonable entirely that's the issue. The issue is whether a reasonable person confronted with this situation would have acted in the fashion Mr. Wenger did. I think therefore the portion of retreat instruction in this case is relevant to the case as set forth ....

No arguable basis exists for challenging the trial court's instructions. The statutory privilege of self-defense requires that the actor refrain from intentionally using force intended or likely to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself. Section 939.48, Stats. While Wisconsin has no statutory duty to retreat, whether the opportunity to retreat was available may be a consideration regarding whether the defendant reasonably believed the force used was

are confident there is no reasonable probability that the exclusion of this cumulative testimony contributed to the conviction. *See Dyess*, 124 Wis.2d at 543, 370 N.W.2d at 231-32.

Second, while it is true that the State at least implicitly disputed the factual details of the March 20 incident,[7] the State points out that Wenger's brief fails to name the witnesses he wished to call and those who were barred. In addition, Wenger also fails to identify the records he claims were erroneously excluded.[8] Also, under the trial court's ruling, Wenger could have called Ganz to the stand but did not. Further, Wenger filed no reply brief pointing out which witnesses he would have called to support his self-defense claim.

In fact, the only excluded evidence to which Wenger specifically directs our attention was that concerning Mueller's medication with which Wenger hoped to impeach Mueller. Wenger claims that this was "directly relevant to the knowledge of the defendant which would support his claim of self-defense," and that the trial court refused to allow him to make an offer of proof regarding its relevancy. However, aside from this conclusory argument, he fails to tell us how this evidence is relevant to his knowledge. Thus, we need not address this argument. *See Barakat v. DHSS*, 191 Wis.2d 769, 786, 530 N.W.2d 392, 398 (Ct. App. 1995).

3. Discretionary Reversal Under § 752.35, Stats.

Finally, Wenger requests a discretionary reversal under § 752.35, Stats., because the trial court's errors in giving the jury instruction and excluding *McMorris* evidence prevented the real controversy from being fully tried. Section 752.35 allows us to reverse a judgment if the real controversy has not been fully tried or for any reason it is probable that justice has miscarried. *See Vollmer v. Luety*, 156 Wis.2d 1, 16-17, 456 N.W.2d 797, 804 (1990).[9] To reverse because the real controversy has not been fully tried, we need not determine if the probability of a different result exists on retrial. *See id.* Our courts have reversed judgments pursuant to § 752.35 when, for example, the trial court erroneously excluded evidence or gave an erroneous jury instruction that prevented the real controversy from being fully tried. *See State v Harp*, 161 Wis.2d 773, 781-82, 469 N.W.2d 210, 213-14 (Ct. App. 1991).

We conclude that the jury instruction was not error and that any error regarding exclusion of *McMorris* evidence was harmless. Therefore, support for Wenger's argument fails. The real controversy, whether Wenger acted in self-defense when he shot Mueller, was fully tried. Thus, we reject Wenger's request for a new trial under § 752.35, Stats.

By the Court.-Judgment affirmed.

Not recommended for publication in the official reports.

1 The judgment of conviction notes that the jury convicted Wenger of first-degree injury by reckless conduct contrary to § 940.23(1), Stats. In contrast, the verdict reflects that the jury found him guilty of second-degree injury by reckless conduct contrary to § 940.23(2): "We, the jury, find the defendant, LaVere Wenger, guilty of Second Degree Reckless Injury as charged in the information." The jury also answered "yes" to the following question: "Did the defendant commit the crime of Second Degree Reckless Injury while using a dangerous weapon?" Additionally, the trial court instructed the jury on § 940.23(2), as well as on use of a dangerous weapon under § 939.63(2), Stats. While the criminal complaint indeed cites subsec. (1), the information cites § 940.23(2), and the verdict and the jury instructions refer to the information, not the criminal complaint. Moreover, the parties agree that he was convicted under subsec. (2), not subsec. (1). Based on our review of the record, we assume that the judgment's reference to subsec.(1) in the judgment of conviction is a typographical error and that its omission of §939.63(2) was an oversight.

2 *See McMorris v. State*, 58 Wis.2d 144, 205 N.W.2d 559 (1973).

3 Wenger's blood alcohol level was 0.15%.

4 The State argues that the trial court did not err by giving the pattern jury instruction on retreat because Wenger was not entitled to a self-defense instruction; therefore, the State argues, Wenger cannot complain of an alleged error in giving the retreat instruction. Based on the following testimony by Wenger, the State argues that Wenger could not reasonably have

believed that he was threatened with imminent death or great bodily harm to justify the use of deadly force: (1) Mueller was 10 to 12 feet away from him at the time of the shooting; (2)Mueller was turning at a 90-degree angle; and (3) Mueller had no weapon. Looking at all the evidence in the light most favorable to the Wenger's theory, however, *see State v. Jones*, 147 Wis.2d 806, 816, 434 N.W.2d 380, 383 (1989), Wenger was entitled to a self-defense instruction because, accepting Wenger's testimony regarding the day's events and his fear of Mueller, Wenger's belief regarding the necessity of deadly force was reasonable.

5 At trial, Jackie testified that Mueller told her that he intended to shoot Wenger on March20. On cross-examination, however, she acknowledged that Mueller had not mentioned Wenger by name; rather, Mueller told Jackie that he intended to shoot someone, and it was not her. Mueller testified that on March 20, he "had all the intentions of killing [himself]."

6 The State argued that in the 10 months between the March 20 incident and the shooting, Wenger and Mueller "spoke frequently and were cordial." The State also disputed Wenger's account of the incident and was concerned that the jury would also be trying the March 20 incident.

7 In its rebuttal closing argument, the State argued that:

> The March 20, '96 incident, the incident ten months before. [Wenger's counsel] says it is uncontroverted, it is an established fact that this or that, right? What is uncontroverted, and I can't take issue with it, is that LaVere was told these things. Doesn't mean that it is true. If LaVere was told those things that affects his state of mind, but it does not mean that Randy Mueller carried a gun in his car or any other of those things that they talked about. I can't respond to what LaVere says he was told, but the point of the testimony is not that those facts are true, but supposedly what LaVere has in his mind.

8 In his pretrial motion to suppress, Wenger argued that Mueller's medical records were relevant to establish [Wenger's] innocence or guilt. The trial court conducted an in-camera inspection of the records and determined that they were irrelevant to Wenger's case. Wenger's one-word reference in his brief to the trial court's exclusion of records, without further elaboration, renders his argument undeveloped; therefore, we will not address it because we would first have to develop it. *See Barakat v. DHSS*, 191 Wis.2d 769, 786, 530 N.W.2d 392, 398 (Ct. App. 1995) ("amorphous and insufficiently" developed arguments need not be considered).

> Further, Wenger's brief contains one citation to the record. An appellate brief must contain citations to the record for those parts of the record relied upon. *See* §809.19(1), Stats.

9 Section 752.35, Stats., provides, in pertinent part:

> In an appeal to the court of appeals, if it appears from the record that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried, the court may reverse the judgment or order appealed from, regardless of whether the proper motion or objection appears in the record ....

2006 Annual Meeting Officers' Speeches: Chris Cox

Other Speeches

2006 Annual Meeting Officers' Speeches: Kayne Robinson

2006 Annual Meeting Officers' Speeches: John Sigler

2006 Annual Meeting Officers' Speeches: Wayne LaPierre

2006 Annual Meeting Officers' Speeches: Chris Cox

2006 Annual Meeting Officers' Speeches: Sandra Froman

>> Speech Archives

Thank you, Milwaukee, for such a warm welcome. I'm in charge of the Institute for Legislative Action - the political and lobbying arm of your NRA. Our job is to keep tabs on 100 U.S. Senators, 435 U.S. Representatives, all 50 state governors, hundreds of mayors, thousands of State legislators, and on every candidate that wants any of those jobs.

So at ILA, we're your eyes and ears. We're your voice. And when necessary, we're your clenched iron fist that comes down hard and heavy on anybody that stands between you, and your Second Amendment freedoms.

Let me give you some examples. If drunk drivers run over pedestrians with cars, you can't sue General Motors, right? If a thug stabs someone to death you can't sue Buck knives, right? Well, until recently, if a criminal committed a crime with a gun, you could sue the gun maker! In fact, America's gun makers had spent more than a quarter of a billion dollars fighting off these bogus lawsuits. You see, the gun control community couldn't legislate guns out of existence, so they wanted to litigate guns out of existence. You know what? It almost worked. They almost drove them all out of business.

But, in 2004, I made you a promise. I promised that with your help on Election Day, your NRA would save the American firearms industry. Well, I'm proud to report that last October, Congress finally passed our Protection of Lawful Commerce in Arms Act. And, the President signed it into law. So, lawful American gun makers will never be held liable for the acts of violent criminals again!

We're also fighting in our state capitols for laws like the Castle Doctrine. You see, a lot of states say that you have a "**duty to retreat**" from criminals who attack you. I say, they have that backwards. Criminals should have to retreat from you - not the other way around. The Castle Doctrine says you no longer have a "**duty to retreat**" if you're attacked in your home, your vehicle, your place of business, or anywhere else you have a legal right to be. Ten states have already passed a Castle doctrine. Speaker John Gard and State Representative Carol Owens were on the **Wisconsin** House floor just a few weeks ago in support of it. So, if you believe in your right to defend yourself without being prosecuted, or sued by the criminal who attacked you, and I bet you do, let's work together and give the good people of **Wisconsin** the protection they deserve, with the Castle Doctrine!

We're also fighting state by state for Worker Protection laws. It's wrong for employers to fire employees who choose to keep a legal firearm in their locked vehicles while at work. Because if you can't safely store a firearm in your car, the right to defend yourself away from your home disappears! No company, I don't care if it's Wal-Mart, or Joe's Mart, can infringe on your right to defend yourself. Your boss didn't give you that right...and we are not going to let him take it away! You saw footage of the tyranny in New Orleans. When former Police Chief Eddie Compass gave the order to confiscate ALL firearms from EVERYONE in New Orleans...your ILA went down there...and filed a federal lawsuit demanding that Mayor Ray Nagin stop this assault on civil rights. AND WE WON.

We demanded they return the guns and when they didn't, we sued them again... and they backed down. Now, we're working to make sure that the laws in every state in the Country are clear - that what happened in New Orleans - will never, ever happen again. You're hearing a

theme here: your right to defend yourself! There's a reason for that. Americans are fed up with government bureaucrats that put the rights of criminals ahead of the rights of lawful citizens.

Let me tell you a true story. Across the **Wisconsin** border in Des Moines, Iowa, Darlene Loudon is sitting in the waiting room at her dentist's office. Suddenly, a man assaults her with an 8-inch knife! Just then, Darlene's husband sees what's happening, pulls his 22-caliber handgun, and wounds the knife-wielding man before he hurts anyone else. Darlene Loudon's husband is licensed to carry. Across the **Wisconsin** border in Minneapolis, Minnesota, an armed thief is on a shooting rampage in Joe Lincoln's grocery store. Three people are injured, and more are threatened. Joe grabs his pistol, wounds the robber, and stops the shooting spree. Joe Lincoln is licensed to carry. Across the **Wisconsin** border in Detroit, Michigan, an ex-con named Clabe Hunt is waiting. He's waiting as 32-year-old Barbara Holland pulls into her garage. The ex-con slams her to the floor. Flat on her back, she looks up...and sees his nickel-plated pistol in her face. She thinks about her 15-year old daughter inside the house. She draws her 9mm pistol from her waist, fires, and kills Clabe Hunt. Barbara Holland is licensed to carry. These stories have one thing in common. They all happened on the other side of the **Wisconsin** border. Now let me tell you a true story about this side.

Last November two criminals, Maurice Mason and Bernie Frier, are sitting before a district judge up in Madison to be sentenced for a vicious rampage. First, they kidnap David Kline for ransom, but he wasn't worth any money, so they drive to an abandoned farm, bind his hands with duct tape and rope...and leave him for dead. David Kline is found six days later, barely alive, but doctors have to amputate his hands. As the criminals leave the farm, their car gets stuck, so they call a taxi. Cab driver John Romberg drives them to Baraboo, where Mason shoots him in the head with a shotgun -- killing him.

Then on to Middleton, where both men beat and rape 22-year old Jennifer Hitchcock. Then Bernie Frier...shoots her dead. Now, I can't tell you if David Kline John Romberg, or Jennifer Hitchcock ever wanted a Right-to-Carry permit. But I can tell you this, in **Wisconsin**, they never had that choice. Because **Wisconsin** is one of only two states in America ... one of only two states in America...that denies its residents any form of right to carry for personal protection. Why? Why is your life worth less than someone's life in Minnesota or Iowa or Michigan or in 45 other states? It's not because the people don't want right to carry.

The polls show that you do. It's not because law enforcement doesn't believe in self-defense. They do. Here's how I know. It happened two miles north of here last year. A 64-year-old man from Yorktown, Arkansas, stopped at a gas station to ask for directions. Suddenly, four young men, at least three with prior records, shoved a gun in his face and demanded his van and his money. They punched him, took his walking cane and beat him with it. The "old man" from Arkansas pulled a gun from under his car seat, and shot one attacker dead. The rest fled, but were later caught by police. That 64-year-old man was licensed to carry in Arkansas. But that permit meant nothing here. He was in big trouble with **Wisconsin** law - for saving his own life. But Assistant D.A. Karen Loebel chose not to prosecute him.

I guess she thinks it's better to defend yourself than die.And so do the majority of **Wisconsin** voters! But not your Governor. Two times in the past three years, your legislature passed a personal protection act. And both times Governor Jim Doyle vetoed it. Does Jim Doyle think it's better to be robbed and beaten to death, than to do what that Arkansas man did? If Jim Doyle was attacked like that, I don't think he'd practice what he preaches and send all his armed bodyguards home for the day. Then turn over his car keys and say, "Boys, I'm yours for the taking". Who does he think he is? Denying you rights he keeps for himself? Right here in Milwaukee, the number of homicides has increased nearly 40% in the past year. It's time for this to stop!

Governor Doyle and his allies need to explain why they don't trust the people who elected them, who pay their salaries and who pick up the tab for their armed security 24 hours a day, 7 days a week, 365 days a year!

The truth is, in right-to-carry states not all gun owners actually choose to get a concealed carry permit. But the criminals don't know which ones do. When the wolves can't tell the sheep from the lions, everyone is safer. But in **Wisconsin**, the wolves know that everyone is a sheep! Think about it: If you're an armed criminal, do you choose to rob, rape or murder in a state with right to

carry? Or do you choose **Wisconsin**, where the governor might as well make you wear a t-shirt that says, "I'M WITH STUPID ... AND WE'RE BOTH DISARMED AND DEFENSELESS."

You've got to hand it to the **Wisconsin** legislature - they almost overrode Doyle's veto. But they failed by two votes, because Representatives John Steinbrink and Terry Van Akkeren switched sides and stabbed you in the back in the dark of night! Folks, it's time to get rid of politicians who play partisan politics with your rights and with your life! So, if you want a Castle Doctrine in **Wisconsin**...DUMP DOYLE! If you want Lawsuit Pre-emption in **Wisconsin**, come on now, say it with me...DUMP DOYLE! If you want Worker Protection in **Wisconsin**...DUMP DOYLE! And if you ever want a Personal Protection Act in **Wisconsin**...let them hear you in Madison...DUMP DOYLE, and replace him with a true friend of the Second Amendment, MARK GREEN!

Well, my time is almost up. But, friends, we've got some big races coming up in November that will pave the way for the Second Amendment shootout of all time in the 2008 elections. From Mark Kennedy in Minnesota to Rick Santorum in Pennsylvania to Jim Talent in Missouri, and Conrad Burns in Montana. This November's elections are more important than ever. Let me tell you why. If we don't make sure that our pro-gun friends are re-elected this November, then the gun haters Hall of Shame, Ted Kennedy, Chuck Schumer, John Kerry and Dianne Feinstein will control the U.S. Congress next year, along with their friends Nancy Pelosi and John "Lets Ban All Handguns" Conyers. And in 2008, you can bet they'll be back here in Milwaukee, campaigning for Hillary Clinton for President. Friends, let's make damn sure that our brave men & women in uniform NEVER have to salute HER as their Commander in Chief! It's time to unite, fight, and make our politicians do what's right. And if they won't - that clenched, iron fist called the NRA will pound them to political pulp and leave them in the ash heap of history where freedom's patriots always dispose of freedom's enemies.

Thank you very much.

State of Wisconsin
2009 – 2010 LEGISLATURE

LRBa0190/P1
PJH:...

SOON

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO 2009 SENATE BILL 129

4-19-09
J-note

At the locations indicated, amend the bill as follows:

1. Page 2, line 8: after "actor's residence" insert "or vehicle".

2. Page 2, line 8: after "the residence" insert "or its premises or vehicle".

3. Page 2, line 11: after "actor's residence" insert "or vehicle".

4. Page 2, line 12: after "the residence" insert "or its premises or vehicle".

5. Page 2, line 14: after "the residence" insert "or vehicle".

6. Page 2, line 18: after "residence" insert "or vehicle".

7. Page 2, line 20: after "residence" insert "or vehicle".

8. Page 3, line 4: after "residence" insert "or vehicle".

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0190/1dn
PJH:...

date

Mike,

Please review the amendment to ensure it is consistent with your intent. Please note that the suggested material to page 2, line 5, of the draft, which would allow the presumption of reasonableness if a person uses deadly force to prevent "the commission of a felony" exceeds what is allowed under current law. Current law allows deadly force only when a person reasonably believes that he or she is in danger of imminent death or great bodily harm.

Senate Bill 129 creates a presumption of reasonableness under certain circumstances (i.e., if someone else is unlawfully entering your home), but does not allow a person to use deadly force except when he or she reasonably believes that death or great bodily harm is imminent. If you would like to add that a person may use deadly force to prevent a felony, your amendment should amend s. 939.48 (1) rather than add "or the commission of a felony" to the presumption of reasonableness. Please let me know if you would like to do this.

I amended SB-129 to create a presumption of reasonableness when another person enters a vehicle that the person occupies, but I did not amend the bill to add that the person may act to prevent death or harm "to another" because s. 939.48 (4) already allows a person to use the same force to protect another as is allowed to protect himself or herself. I also did not amend the bill to require that the person be "lawfully" in his or her residence or vehicle because the bill already nullifies the presumption of reasonableness if the person was engaged in unlawful activity at the time of the incident.

I amended the bill to create a presumption of reasonableness if the person uses deadly force if the person is in his or her home or its premises or in his or her vehicle when the intruder enters the residence or vehicle. I did not amend the bill to create a presumption of reasonableness if the person uses deadly force when an intruder enters the premises of the person's home. The suggested language was ambiguous on this point, and I did not interpret your intent to create the presumption of reasonableness if a person uses deadly force against an intruder entering the premises of a residence but not the residence itself. Please let me know if you disagree.

I did not amend the bill to state that there is no "duty to retreat" because I believe that it would be redundant. Currently, a court will give a jury instruction on the "duty to

retreat" only when the court concludes that retreat is an important issue in the case. The jury instructions reflect that there is no duty to retreat under current law, but that sometimes whether a person retreated can be considered when a jury is determining whether the person acted reasonably under the circumstances. Wisconsin Jury Instruction – Criminal 810 states:

There is no duty to retreat. However, in determining whether the defendant reasonably believed the amount of force was used was necessary to prevent or terminate the interference, you may consider whether the defendant had the opportunity to retreat with safety, whether such retreat was feasible, and whether the defendant knew of the opportunity to retreat.

Senate Bill 129 creates a *presumption* of reasonableness under certain circumstances; if a fact–finder determines that those circumstances are present, then under the bill there would be no need to consider whether the person retreated in order to find that the person acted reasonably. Please let me know if you disagree.

Finally, I did not amend the bill to include the provisions related to a civil action because I think they exceed the scope of the bill. Senate Bill 129 amends a section of the criminal statutes and relates only to criminal prosecutions. If you would like a bill that awards costs, attorneys fees, etc. to a prevailing party in a civil lawsuit that involves the use of force, I would recommend drafting that as a separate bill.

Please let me know if you have any questions or comments. I look forward to hearing from you.

Peggy Hurley
Legislative Attorney
Phone: (608) 266–8906
E–mail: peggy.hurley@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0190/P1dn
PJH:jld:rs

April 21, 2009

Mike,

Please review the amendment to ensure it is consistent with your intent. Please note that the suggested material to page 2, line 5, of the draft, which would allow the presumption of reasonableness if a person uses deadly force to prevent "the commission of a felony" exceeds what is allowed under current law. Current law allows deadly force only when a person reasonably believes that he or she is in danger of imminent death or great bodily harm.

Senate Bill 129 creates a presumption of reasonableness under certain circumstances (i.e., if someone else is unlawfully entering your home), but does not allow a person to use deadly force except when he or she reasonably believes that death or great bodily harm is imminent. If you would like to add that a person may use deadly force to prevent a felony, your amendment should amend s. 939.48 (1) rather than add "or the commission of a felony" to the presumption of reasonableness. Please let me know if you would like to do this.

I amended SB-129 to create a presumption of reasonableness when another person enters a vehicle that the person occupies, but I did not amend the bill to add that the person may act to prevent death or harm "to another" because s. 939.48 (4) already allows a person to use the same force to protect another as is allowed to protect himself or herself. I also did not amend the bill to require that the person be "lawfully" in his or her residence or vehicle because the bill already nullifies the presumption of reasonableness if the person was engaged in unlawful activity at the time of the incident.

I amended the bill to create a presumption of reasonableness if the person uses deadly force if the person is in his or her home or its premises or in his or her vehicle when the intruder enters the residence or vehicle. I did not amend the bill to create a presumption of reasonableness if the person uses deadly force when an intruder enters the premises of the person's home. The suggested language was ambiguous on this point, and I did not interpret your intent to create the presumption of reasonableness if a person uses deadly force against an intruder entering the premises of a residence but not the residence itself. Please let me know if you disagree.

I did not amend the bill to state that there is no "duty to retreat" because I believe that it would be redundant. Currently, a court will give a jury instruction on the "duty to

retreat" only when the court concludes that retreat is an important issue in the case. The jury instructions reflect that there is no duty to retreat under current law, but that sometimes whether a person retreated can be considered when a jury is determining whether the person acted reasonably under the circumstances. Wisconsin Jury Instruction - Criminal 810 states:

There is no duty to retreat. However, in determining whether the defendant reasonably believed the amount of force was used was necessary to prevent or terminate the interference, you may consider whether the defendant had the opportunity to retreat with safety, whether such retreat was feasible, and whether the defendant knew of the opportunity to retreat.

Senate Bill 129 creates a *presumption* of reasonableness under certain circumstances; if a fact-finder determines that those circumstances are present, then under the bill there would be no need to consider whether the person retreated in order to find that the person acted reasonably. Please let me know if you disagree.

Finally, I did not amend the bill to include the provisions related to a civil action because I think they exceed the scope of the bill. Senate Bill 129 amends a section of the criminal statutes and relates only to criminal prosecutions. If you would like a bill that awards costs, attorneys fee, etc. to a prevailing party in a civil lawsuit that involves the use of force, I would recommend drafting that as a separate bill.

Please let me know if you have any questions or comments. I look forward to hearing from you.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

State of Wisconsin
2009 – 2010 LEGISLATURE

LRBa0190/P2
PJH:jld:rs

SOON

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO 2009 SENATE BILL 129

5-4-09

At the locations indicated, amend the bill as follows:

1. Page 2, line 8: after "actor's residence" insert "or vehicle".

2. Page 2, line 8: after "the residence" insert "or its premises or vehicle".

3. Page 2, line 11: after "actor's residence" insert "or vehicle".

4. Page 2, line 12: after "the residence" insert "or its premises or vehicle".

5. Page 2, line 14: after "the residence" insert "or vehicle".

6. Page 2, line 18: after "residence" insert "or vehicle".

7. Page 2, line 20: after "residence" insert "or vehicle".

8. Page 3, line 4: after "residence" insert "or vehicle".

(END)

State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa0190/P2
PJH:jld:jf

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

SENATE AMENDMENT ,

TO 2009 SENATE BILL 129

At the locations indicated, amend the bill as follows:

1. Page 2, line 8: after "actor's residence" insert "or its premises or vehicle".

2. Page 2, line 8: after "the residence" insert "or its premises or vehicle".

3. Page 2, line 11: after "actor's residence" insert "or its premises or vehicle".

4. Page 2, line 12: after "the residence" insert "or its premises or vehicle".

5. Page 2, line 14: after "the residence" insert "or its premises or vehicle".

6. Page 2, line 18: after "residence" insert "or its premises or vehicle".

7. Page 2, line 20: after "residence" insert "or its premises or vehicle".

8. Page 3, line 4: after "residence" insert "or its premises or vehicle".

(END)